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HDP/SB/21 based on PTO/SB/21 (08,00)

APV # IFW

TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Application Number	09/767,839
Filing Date	January 24, 2001
Inventor(s)	Philip D. MOONEY et al.
Group Art Unit	2618
Examiner Name	T. X. Nguyen
Attorney Docket Number	129250-001021/US

ENCLOSURES (check all that apply)

<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Assignment Papers (for an Application) <input type="checkbox"/> Letter to the Official Draftsperson and _____ Sheets of Formal Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> LETTER SUBMITTING APPEAL BRIEF AND APPEAL BRIEF (w/clean version of pending claims) <input checked="" type="checkbox"/> Appeal Communication to Group (Notice of Appeal, <u>Brief</u> , Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Check # 1293 for \$500		
<table><tr><td>Remarks</td><td></td></tr></table>			Remarks	
Remarks				

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	CAPITOL PATENT & TRADEMARK LAW FIRM, PLLC	Attorney Name	John E. Curtin	Reg. No.	37,602
Signature					
Date	March 22, 2007				

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FEE TRANSMITTAL for FY 2007

Effective 10/01/2004. Patent fees are subject to annual revision.

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 500.00

Complete if Known

Application Number	09/767,839
Filing Date	January 24, 2001
First Named Inventor	Philip D. Mooney
Examiner Name	T.X. Nguyen
Art Unit	2618
Attorney Docket No.	129250-001021/US

METHOD OF PAYMENT (check all that apply)

☒ Check ☐ Credit card ☐ Money ☐ Other ☐ None
Order
☒ Deposit Account:Deposit
Account
Number

50-3777

Deposit
Account
Name

CAPITOL PATENT & TRADEMARK LAW FIRM, PLLC

The Director is authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☒ Credit any overpayments
☒ Charge any additional fee(s) during the pendency of this application
☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

FEE CALCULATION

1. BASIC FILING FEE

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1011	300	2011	150	Utility filing fee	
1012	200	2012	100	Design filing fee	
1013	200	2013	100	Plant filing fee	
1014	300	2014	150	Reissue filing fee	
1005	200	2005	100	Provisional filing fee	
SUBTOTAL (1)					(\$ 0)

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims		-20 **	=	Extra Claims 9 prev. paid for	X	Fee from below	=	Fee Paid 0
Independent Claims		-3 **	=	4 prev. paid for	X		=	0
Multiple Dependent			=				=	0

Large Entity		Small Entity		Fee Description
Fee Code	Fee (\$)	Fee Code	Fee (\$)	
1202	50	2202	25	Claims in excess of 20
1201	200	2201	100	Independent claims in excess of 3
1203	360	2203	180	Multiple dependent claim, if not paid
1204	200	2204	100	** Reissue independent claims over original patent
1205	50	2205	25	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$ 0)

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity Small Entity

Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	Fee Paid
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet.	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	120	2251	60	Extension for reply within first month	
1252	450	2252	225	Extension for reply within second month	
1253	1020	2253	510	Extension for reply within third month	
1254	1,590	2254	795	Extension for reply within fourth month	
1255	2,160	2255	1080	Extension for reply within fifth month	
1401	500	2401	250	Notice of Appeal	500
1402	500	2402	250	Filing a brief in support of an appeal	
1403	1000	2403	500	Request for oral hearing	
1452	500	2452	250	Petition to revive - unavoidable	
1453	1500	2453	750	Petition to revive - unintentional	
1501	1400	2501	700	Utility issue fee (or reissue)	
1502	800	2502	400	Design issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17 (q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	790	2809	395	Filing a submission after final rejection (37 CFR § 1.129(a))	
1810	790	2810	395	For each additional invention to be examined (37 CFR § 1.129(b))	
1801	790	2801	395	Request for Continued Examination (RCE)	

Other fee (specify) _____

*Reduced by Basic Filing Fee Paid SUBTOTAL (3) (\$500)

4. SEARCH/EXAMINATION FEES

1111	500	2111	250	Utility Search Fee	
1112	100	2112	50	Design Search Fee	
1113	300	2113	150	Plant Search Fee	
1114	500	2114	250	Reissue Search Fee	
1311	200	2311	100	Utility Examination Fee	
1312	130	2312	65	Design Examination Fee	
1313	160	2313	80	Plant Examination Fee	
1314	600	2314	300	Reissue Examination Fee	

SUBTOTAL (4) (\$0)

SUBMITTED BY

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Date

March 22, 2007

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IN THE U.S. PATENT AND TRADEMARK OFFICE

Application No.: 09/767,839
Filing Date: January 24, 2001
Applicant: Philip D. Mooney et al.
Group Art Unit: 2618
Examiner: T. X. Nguyen
Title: SYSTEM AND METHOD FOR SWITCHING
BETWEEN AUDIO SOURCES
Attorney Docket: 129250-001021/US

APPLICANTS/APPELLANTS' BRIEF ON APPEAL

MAIL STOP APPEAL BRIEF - PATENTS

Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

March 22, 2007



APPELLANTS' BRIEF ON APPEAL
U.S. Application No.: 09/767,839
Atty. Docket: 129250-001021/US

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APPELLANTS' BRIEF ON APPEAL

I. REAL PARTY IN INTEREST:

The real party in interest in this appeal is Lucent Technologies Inc. Assignment of the application was submitted to the U.S. Patent and Trademark Office and recorded at Reel 011520, Frame 0248.

II. RELATED APPEALS AND INTERFERENCES:

There are no known appeals or interferences that will affect, be directly affected by, or have a bearing on the Board's decision in this Appeal.

III. STATUS OF CLAIMS:

Claims 4, 5, 7-10, 13-17, 19-23, 38, 41, 42, 45, 46 and 50 are pending in the application, with claims 38, 41, 45 and 50 being written in independent form.

Claims 1-17 and 19-48 were rejected under 35 U.S.C. §103(a) based on Anvekar et al., U.S. Patent Publication No. 2002-0068610 ("Anvekar") and Wang et al, U.S. Patent No. 5,757,929 ("Wang"). Claims 18, 49 and 50 were rejected under 35 U.S.C. §103(a) based on Anvekar in combination with Wang and Lowe et al, U.S. Patent No. 6,298,218 ("Lowe"). Claims 4, 5, 7-10, 13-17, 19-23, 38, 41, 42, 45, 46 and 50 are being appealed.

IV. STATUS OF AMENDMENTS:

An Amendment After Final (AAF) was filed on November 22, 2006. In an Advisory Action dated December 18, 2006, the Examiner stated that the AAF was considered but did not place the application in condition for allowance.

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V. SUMMARY OF CLAIMED SUBJECT MATTER:

(i). Overview of the Subject Matter of the Independent Claims

The present invention allows the user of an audio device (or devices) to quickly and easily switch between multiple audio signals (e.g., telephone, radio, MP3-like signals, etc..) upon reception of designated triggering events. More specifically, independent claim 38 reads as follows (specification citations follow in parenthesis):

38. A method of switching among wireless audio sources, comprising:

receiving a plurality of Bluetooth™ compliant transmissions, each including a respective input audio signal, from respective electronic devices; and

selecting at least one of said received audio signals for output to a headset in accordance with at least one stored selection instruction overlaid on another audio signal, said selection instruction specifying a designated triggering event for triggering said selection,

wherein said designated triggering event is receipt of an advertising message from a merchant.

(see specification, page 4, lines 7-24; page 5, line 21 to page 6, line 29; page 7, lines 14-24; page 8, line 15 to page 9, line 4, for example).

41. A method of switching among wireless audio sources, comprising:

receiving a plurality of Bluetooth™ compliant transmissions, each including a respective input audio signal from the same network, from respective electronic devices; and

selecting at least one of said received audio signals, for output to a headset, overlaid on another audio signal in accordance with at least one stored selection instruction, said selection instruction specifying a designated triggering event for triggering said selection.

(see specification, page 4, lines 7-27; page 5, line 21 to page 6, line 29; page 7, lines 14-24; page 8, line 15 to page 9, line 4, for example).

45. A programmable audio output device, comprising:

a wireless receiver which receives a plurality of audio signals from the same network transmitted from respective wireless audio sources;

a storage device that stores at least one selection instruction which specifies a designated triggering event for triggering said selection;

a programmable switch coupled to said storage device and said wireless receiver that selects one of said plurality of audio signals for output according to said at least one stored selection instruction and said designated triggering event; and

a headset for supporting said wireless receiver, said storage device, said programmable switch and at least one headset speaker, said at least one headset speaker being coupled to said programmable switch to aurally reproduce said one of said plurality of audio signals, selected for output, overlaid on another audio signal.

(see specification, page 4, lines 7-24; page 5, line 21 to page 6, line 29; page 7, lines 14-24; page 8, line 15 to page 9, line 4, for example).

50. A method of switching among wireless audio sources, comprising:

receiving a plurality of Bluetooth™ compliant transmissions, each including a respective input audio signal, from respective electronic devices; and

selecting at least one of said received audio signals, for output to a headset in accordance with at least one stored selection instruction, overlaid on another audio signal, said selection instruction specifying a designated triggering event for triggering said selection,

wherein said designated triggering event is selected from the group consisting of receipt of an incoming information update and receipt of an advertising message from a merchant.

(see specification, page 4, lines 7-24; page 5, line 21 to page 6, line 29; page 7, lines 14-24; page 8, line 15 to page 9, line 4, for example).

(ii). The Remainder of the Specification Also Supports the Claims

The Appellants note that there may be additional disclosure in the Specification that also supports the independent and dependent claims. Further, by referring to the disclosure above the Appellants do not represent that this is the only evidence that supports the independent claims nor do Appellants necessarily represent that this disclosure can be used to fully interpret the claims of the present invention. Instead, this disclosure is an overview of the claimed subject matter.

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL:

Appellants seek the Board's review and reversal of the rejection of claims 4, 5, 7-10, 13-17, 19-23, 38, 41, 42, 45, and 46 under 35 U.S.C. §103(a) based on Anvekar and Wang and claim 50 under 35 U.S.C. §103(a) based on Anvekar in combination with Wang and Lowe.

VII. ARGUMENTS:

A. The §103 Rejections of Claims 4, 5, 7-10, 13-17, 19-23, 38, 41, 42, 45, and 46

Claims 1-17 and 19-48 were rejected under 35 U.S.C. §103(a) based on Anvekar and Wang. Of these, claims 4, 5, 7-10, 13-17, 19-23, 38, 41, 42, 45, and 46 are still pending. Appellants respectfully disagree with these rejections for at least the following reasons.

Neither Ankevar nor Wang, taken separately or in combination, disclose or suggest the selection of an audio signal that has been overlaid on another audio signal and the output of such a signal to a headset as in claims 4, 5, 7-10, 13-17, 19-23, 38, 41, 42, 45, and 46.

For example, the Examiner admits that Anvekar does not disclose the output of one audio signal overlaid on another. To make up for this deficiency the Examiner relies on Wang.

Though Wang appears to disclose the overlay of one audio signal on another, such an overlaid audio signal is not output to a headset. Instead, it is output from a garment that is worn by a user. In fact, Wang explicitly states that a headset is not used at all.

In the Advisory Action the Examiner states that Wang discloses a hands-free device that is placed in a garment so a user's ear is not blocked. Further, the Examiner relies on Wang for the teaching of a wireless device that receives a plurality of audio sources and reproduces at least two of the sources. Setting aside for the purposes of Appellants initial appeal brief whether these statements are accurate, the Appellants note that the Examiner fails to address the position raised by Appellants, namely, that Wang fails to disclose or suggest the selection of an audio signal that has been overlaid on another audio signal and the output of such a signal to a headset.

Accordingly, Appellants submit that the subject matter of claims 4, 5, 7-10, 13-17, 19-23, 38, 41, 42, 45 and 46 would not have been obvious to one of ordinary skill in the art upon reading the disclosure of Anvekar taken separately, or in combination, with Wang.

Appellants respectfully request that the members of the Board reverse the Examiner's decisions and allow claims 4, 5, 7-10, 13-17, 19-23, 38, 41, 42, 45 and 46.

B. The §103 Rejection of Claim 50

Claims 18, 49 and 50 were rejected under 35 U.S.C. §103(a) based on Anvekar in combination with Wang and Lowe. Of the three claims, claim 50 is the lone remaining claim still pending. Appellants respectfully disagree with this rejection for at least the following reason.

Appellants note that claim 50 contains the feature of the selection of an audio signal that has been overlaid on another audio signal and the output of such a signal to a headset discussed above. Appellants respectfully submit that the subject matter of claim 50 would not have been obvious to one of ordinary skill in the art upon reading the disclosures of Anvekar taken separately or in combination with Wang and Lowe for the reasons stated earlier above and because Lowe does not make up for the deficiencies of Anvekar and Wang.

Accordingly, Appellants respectfully request that the members of the Board reverse the decision of the Examiner, withdraw this rejection and allow claim 50.

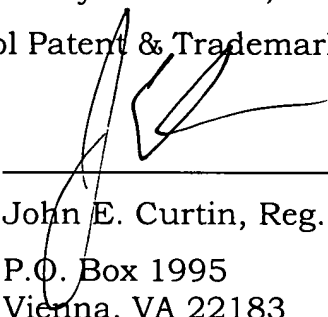
Conclusion:

Appellants respectfully request that the members of the Board reverse the decision of the Examiner and allow claims 4, 5, 7-10, 13-17, 19-23, 38, 41, 42, 45, 46 and 50.

The Commissioner is authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 50-3777 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,
Capitol Patent & Trademark Law Firm, PLLC

By: _____


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P.O. Box 1995
Vienna, VA 22183
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VIII. CLAIMS APPENDIX

1. (Cancelled).
2. (Cancelled).
3. (Cancelled).
4. A method as in claim 50 , wherein said group further includes receipt of a message from a wireless audio source.
5. A method as in claim 50, wherein said group further includes a particular date and time.
6. (Cancelled).
7. A method as in claim 50, wherein said group further includes receipt of an electronic message at a wireless audio source.
8. A method as in claim 50, wherein said group further includes a request to communicate via a mobile telephone.
9. A method as in claim 45, wherein said wireless audio sources are in RF communication with said wireless receiver.
10. A method as in claim 9, wherein said wireless receiver and said wireless audio sources are Bluetooth™ compliant.

11. (Cancelled).

12. (Cancelled).

13. A method as in claim 50, further comprising selecting at least another of said received audio signals for output to said headset after said triggering event has concluded.

14. A method as in claim 50, wherein said selecting is performed according to a plurality of selection instructions.

15. A method as in claim 14, wherein each of said selection instructions is associated with a respective electronic device so that selection of a particular electronic device occurs in response to a triggering event included in the associated selection instruction.

16. A method as in claim 50, wherein said group further includes a chronological event.

17. A method as in claim 50, wherein said group further includes a mobile telephone transmission.

18. (Cancelled).

19. A method as in claim 50, wherein at least one of said electronic devices is a mobile telephone.

20. A method as in claim 50, wherein at least one of said electronic devices is an AM/FM radio.

21. A method as in claim 50, wherein at least one of said electronic devices is a compact disc (CD) player.

22. A method as in claim 50, wherein at least one of said electronic devices is a walkie-talkie radio.

23. A method as in claim 50, wherein at least one of said electronic devices is a personal computer.

24. (Cancelled).

25. (Cancelled).

26. (Cancelled).

27. (Cancelled).

28. (Cancelled).

29. (Cancelled).

30. (Cancelled).

31. (Cancelled).

32. (Cancelled).

33. (Cancelled).

34. (Cancelled).

35. (Cancelled).

36. (Cancelled).

37. (Cancelled).

38. A method of switching among wireless audio sources, comprising:
receiving a plurality of Bluetooth™ compliant transmissions, each
including a respective input audio signal, from respective electronic devices;
and

selecting at least one of said received audio signals for output to a
headset in accordance with at least one stored selection instruction overlaid on
another audio signal, said selection instruction specifying a designated
triggering event for triggering said selection,

wherein said designated triggering event is receipt of an advertising
message from a merchant.

39. (Cancelled).

40. (Cancelled).

41. A method of switching among wireless audio sources, comprising:

receiving a plurality of 'Bluetooth™ compliant transmissions, each including a respective input audio signal from the same network, from respective electronic devices; and

selecting at least one of said received audio signals, for output to a headset, overlaid on another audio signal in accordance with at least one stored selection instruction, said selection instruction specifying a designated triggering event for triggering said selection.

42. The method as in claim 41 wherein the network comprises a piconet.

43. (Cancelled).

44. (Cancelled).

45. A programmable audio output device, comprising:

a wireless receiver which receives a plurality of audio signals from the same network transmitted from respective wireless audio sources;

a storage device that stores at least one selection instruction which specifies a designated triggering event for triggering said selection;

a programmable switch coupled to said storage device and said wireless receiver that selects one of said plurality of audio signals for output according to said at least one stored selection instruction and said designated triggering event; and

a headset for supporting said wireless receiver, said storage device, said programmable switch and at least one headset speaker, said at least one headset speaker being coupled to said programmable switch to aurally reproduce said one of said plurality of audio signals, selected for output, overlaid on another audio signal.

46. The device as in claim 45 wherein the network comprises a piconet.

47. (Cancelled).

48. (Cancelled).

49. (Cancelled).

50. A method of switching among wireless audio sources, comprising:

receiving a plurality of Bluetooth™ compliant transmissions, each including a respective input audio signal, from respective electronic devices; and

selecting at least one of said received audio signals, for output to a headset in accordance with at least one stored selection instruction, overlaid on another audio signal, said selection instruction specifying a designated triggering event for triggering said selection,

wherein said designated triggering event is selected from the group consisting of receipt of an incoming information update and receipt of an advertising message from a merchant.

IX. EVIDENCE APPENDIX

None.

X. RELATED PROCEEDINGS APPENDIX

None.